

**Air Pollution Control Advisory Council Meeting  
July 19, 2001 2:05 p.m. – 3:20 p.m.  
Conference Room 111 of the Metcalf Building  
Department of Environmental Quality (DEQ)**

**ATTENDEES**

**Council Members**

Diane Lorenzen, Chemical Engineering  
Dean Johnson, Fuel Industry  
Mike Machler, Meteorologist  
David S. Noell, Labor

**Other Attendees**

Bonnie Rouse, DEQ  
Deb Wolfe, DEQ  
Charles Homer, DEQ  
Jan Brown, DEQ  
Bob Habeck, DEQ  
Don Allen, WEPA  
Bonnie Rouse, DEQ

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**1. Call to Order – Establish a Quorum.** Chairman **Mike Machler** called the Air Pollution Control Advisory Council meeting (APCAC) to order at 2:05 p.m. in Conference Room 111 of the Metcalf Building in Helena, Montana, a quorum was not present. Absent were Dennis Alexander, Kathy Harris, Mitchell Leu, Linda J. Dworak, and Brad Black (Cliff Cox has resigned).

- a) **Review of 5/10/01 minutes:** Mr. Johnson said in the middle of page 5 Dawson County should be Gallatin County. Ms. Lorenzen moved that as corrected the minutes be approved. The motion passed and the May 10, 2001 minutes were approved.
- b) **Unfinished Council Business:** None.
- c) **New Council Business:** None
- d) **Member Reports to Council:** None

**2. Housekeeping Remarks:** Mr. Habeck said Cliff Cox has resigned from APCAC due to work pressures, and Mr. Habeck has been seeking a replacement to represent agriculture. Mr. Habeck said this should be a member with ties to the land and whose primary income is derived from the land. The Agriculture Department at Mr. Habeck's request has emailed the member application to agricultural people they correspond with on technical issues, rulemaking, etc. Mr. Habeck said he has set a deadline of August 1 to receive applications. If none surface, the circle of applicants would need to be broadened by widening the agricultural definition. He hoped to have some candidates by the next meeting for the consideration of APCAC. APCAC's recommended list would be submitted to Governor Martz.

**3. Rulemaking Action Items**

**(a) Natural Events Action Plan/Flagged Data Submittals. Bob Habeck: Planning, Prevention, and Assistance Division (PPAD), DEQ.**

Mr. Habeck said the Department of Environmental Quality (Department) is presenting the Natural Events Action Plan (NEAP) for public notice and hearings. Because of last year's wildfires, high values were reported by many PM-10 monitors and Stevensville was in violation of the PM-10 standards. If some action isn't taken, EPA will declare the area a PM-10 nonattainment area. When this action plan is approved by EPA, the Department will flag certain days on a daily basis because the high emission readings were due to a natural event, in this case wildfires, and then those flagged days would not count

toward determining any air quality designation. EPA lists each type of acceptable natural event. NEAP is on the website. The proposed plan sets forth in table form the responsibilities of each state entity. It also contains a phone and email list. Mr. Habeck said he doesn't expect much controversy on this plan and that most of the hard work has been done.

**(b) Visibility Rulemaking. Debra Wolfe, PPAD, DEQ.**

Ms. Wolfe gave a brief background of the visibility provisions in the Clean Air Act. In 1977 Congress passed the Clean Air Act that establishes protection of visibility in federal Class I areas that meet certain statutory criteria. The General Class I areas are scenic areas like national parks and wilderness areas. The national goal is the prevention of any future and remedying of any existing impairment of visibility in any mandatory Class 1 federal area where impairment results, or could result, from manmade air pollution.

EPA was directed to promulgate rules to assure reasonable progress toward achieving this national visibility goal. One phase of doing this was the reasonably attributable sources – sources from which emissions may be reasonably anticipated to cause or contribute to visibility impairment in a federal Class 1 area. This is the phase to which this present rulemaking request applies. Another part of visibility impairment is called regional haze and is handled in a different phase of the rulemaking process. Regional haze is widespread, regionally homogeneous and comes from a variety of sources that aren't easy to pinpoint. In 1984 Montana's visibility control plan was reviewed and failed because it addressed only point monitoring and requirements for new source review (NSR). In 1986 the Montana's visibility control plan was reviewed and the monitoring and NSR portions were approved but it was found deficient in provisions for implementation and control strategies as were 35 other states. Currently we are deficient in implementation of control strategies, integral vista protection, and long-term strategy provisions. The Department is presently addressing the deficiencies and asking the Board to adopt a rule that will implement the federal requirements. This will enable the Department to have a state plan rather than enforcing the federal implementation plan. These proposed rules provide a means of certifying visibility impairment that may be reasonably attributable to a manmade existing stationary source of emissions. The rules will also require the Department to document and track long-term visibility trends in Montana Class 1 areas.

Ms. Wolfe said the Department would have liked to initiate rulemaking in September or November but work is still being done on the historical background and other questions.

**Mr. Machler** asked how the attribution is done historically. **Ms. Wolfe** said there is a definition of reasonably attributable criteria for how you determine what is reasonably attributable. The federal rule currently says it may be as simple as observing. Ms. Wolfe said the way she reads the rules there is a lot of state discretion. The state must check out a visibility problem that has been certified. The state needs to go through the determination of whether or not the visibility can be attributed to a specific source or sources. The state can specify what has to occur before the pollution can be attributed to a source. The source identified can submit an application to be exempt from the rules. She said the federal rules are flexible enough that the Department can put in what is needed at the state level to make sure the process is fair and reasonable and that the state controls the timeline.

**Ms. Lorenzen** asked if the new state rule would speed up the permit process regarding visibility rules for Class 1 areas under the Clean Air Act. **Mr. Habeck** said this would not be a part of this rulemaking as this is for reasonably attributable sources and that would be under regional haze. He said they are now

working on 301 through 307 of the rules while the regional haze portion (308) is not needed until 2004-2005.

**(c) ARM Chapter 7 Rewrite. Deb Wolfe, PPAD, DEQ.**

Ms. Wolfe said a core group of people from the Clean Air Act Advisory Committee (CAAAC), representing different industry and environmental interests, met periodically over a period of two years to update Subchapter 7, Preconstruction Permitting rules. They went through the rules – revised and organized them in a more logical format and rewrote several sections. Some of the things they did were: added a purpose statement; consolidated definitions; re-worked applicability; worked on the timing/construction/financing issue (the Department is not obligated to issue a permit even if the contractor has begun construction); older, unpermitted units that construct or modify will be subject to the best available control technology (BACT); the facility and the Department must agree on a location for storing the permit; the Department may halt construction of units not in compliance with the permit; application review period restarts if additional permit information is submitted; basis for revocation of permit is clarified; permit may be amended for administrative only changes; denial of permit transfer must be related to air quality law; and incorporation by reference (IBR) and the incinerator rule were moved to the end of the subchapter.

Copies of the rule have been distributed to the Department section heads and they will review them. There will be a meeting of the section heads, and Mr. Klemp and Ms. Wolfe will revise the rules as necessary. She said they hope to have a copy ready for the CAAAC meeting on August 6. She said at that point Jan Brown would handle the formal rules.

**Mr. Johnson** asked about starting construction on a pending permit. **Ms. Wolfe** said there is wording from SB 398 that says if you have submitted a completed application you can proceed. But, basically, the Department is not obligated to issue a permit just because an applicant has poured cement.

**(d) Title V Compliance Certification Rule. Jan Brown: Permitting and Compliance (P&C), DEQ.**

Ms. Brown said this proposed rule revision amends ARM 17.8.1213, requirements for air quality operating permit content relating to compliance certification. Compliance assurance monitoring (CAM) is an element of the Title V operating permit program. EPA promulgated rules to implement compliance assurance monitoring for major stationary sources of air pollution that are required to obtain operating permits under Title V of the Clean Air Act. The rules for this became effective in November 1997. In March of 2000 the Department incorporated the federal compliance assurance monitoring language found in 40 CFR part 64 into the operating permit program. The CAM rules were placed in subchapter 15 of the air rules. Additional revisions to ARM 17.8.1212 and 17.8.1213 linked the CAM subchapter to the existing operating permit rules.

The Natural Resources Defense Council and the Appalachian Power Company filed petitions with the United States Court of Appeals challenging several aspects of the CAM rule. On October 29, 1999, the Court remanded to EPA part of the October 1997 rulemaking that included revisions describing the ongoing compliance certification content requirements. The Court ruled that the compliance certification must address whether the affected facility or source has been in continuous or intermittent compliance. This proposed rulemaking amends ARM 17.8.1213 to incorporate the changes to 40 CFR part 70.6(c) in response to the court decision. The federal final rule amendment became effective on April 30, 2001.

Each air quality operating permit contains requirements for certification of compliance with the terms and conditions contained in the permit. With the proposed rule revision, the compliance certification would include a statement as to whether compliance during the period was continuous or intermittent.

This proposed rule was presented to CAAAC on June 14 and concerns were raised and suggestions made. The Department does not support modifying the federal language imposed by the court, but proposes addressing the concerns as follows: language based on the EPA preamble will be included in the MAR notice; testimony will be presented emphasizing that the rule will not increase CAM reporting requirements; language will be added to the permits explaining how this rule will be applied; and the staff will include a definition of “continuous” in the permits.

Ms. Brown said this rulemaking would be further discussed at the CAAAC meeting on August 7 and then presented to the Board of Environmental Review at their November meeting for authority to initiate rulemaking.

**Ms. Lorenzen** asked if the compliance method were other than continuous what would you certify. **Mr. Homer** said you would certify that it is intermittent. Intermittent means there is a period when compliance is not documented. Mr. Homer said the wording is confusing. You are certifying that during the periods when you are monitoring the system it shows compliance. He said because of the confusing language the Department wants to refer to the language in the EPA preamble in the Department testimony.

**(c) Air Fees. Chuck Homer: P&C, DEQ.** Mr. Homer said that at the July Board meeting the Department would be initiating a rule change for the air quality fees. Usually this initiation takes place at the May Board meeting, but due to establishing a new inventory database the request for initiation is delayed one Board meeting. The Legislature establishes an appropriation that determines the amount of fees that are needed to fund the program. The Board structures the fee schedule to collect the appropriation. The fee is based on the annual emission inventory. The current fee is \$21.12 per ton of emissions and the proposed fee will range from \$20 to \$21.50 so it will be similar to the past year.

Another part of the rule notice the Department will be presenting to the Board is a proposed change in the maximum fee. At the present time there is a maximum fee per permitted facility of \$250,000. Colstrip units 1-4 is the only facility to which the maximum fee has been applied. The Colstrip facility had two permits in the past. When PPL became the owner of Colstrip, the permit was combined in a single permit. The Department does not believe that a change in the way the permits are written should impact the distribution of the fees, so the Department is proposing to increase the maximum fee from \$250,000 to \$500,000 to maintain the same relative level of fees from Colstrip. Mr. Homer said in September at the hearing before the Board, the Department would have a definitive dollar figure to present.

**Mr. Johnson** asked if there was always a cap. **Mr. Homer** said the cap is about five years old and came at the time the Department changed its fees from a tiered system to a flat rate system. This was due to two considerations – one was to base the fee on emissions and the second to acknowledge that at some point the fee should be related to the amount of service the regulated industry receives from the Department. As a result, a minimum fee was established as the smaller companies generally receive a greater amount of service taking more of the Department’s time; and, at a certain point, increasing emissions do not require increased Department services. Mr. Homer said this was the reason for establishing both a minimum fee and a cap.

**Ms. Lorenzen** asked if the loss of ASARCO's fees would make a difference. **Mr. Homer** said the emission decreases would occur in the year 2001 and this year's fees are based on 2000 emissions. He said it is difficult to determine what will happen to the fees next year. While there are decreasing emissions from some of the facilities that have closed because of energy problems, there would be increasing emissions from facilities that have put in temporary power generating units. Mr. Homer said he does not foresee a big change but his opinion is only speculative, as 2001 is only half over.

#### **4. Discussion Items:**

##### **(a) Update on Gasoline Vapor Emissions. Charles Homer.**

Mr. Homer said he had little to add to what was discussed at the last meeting regarding vapor recovery. Ms. O'Connell called the Board and requested an opportunity to speak. She will make a presentation before the Board on July 20. **Mr. Machler** asked what the Department has done regarding her emissions allegation. **Mr. Homer** said they have looked at the size of the facilities and determined they are not over the permitting threshold of 25 tons. He said there have been discussions regarding the risk assessment but the Department hasn't moved forward in this area.

**Mr. Johnson** said since this vapor recovery allegation was brought up at the last APCAC meeting, the stations involved have acted. One moved its vent to the opposite side of the building and the other raised its stack twelve feet above the building.

**Mr. Habeck** said he had talked with Bonnie Rouse early in the week and her work group is looking at this from a pollution prevention standpoint. Any solution would be on a case-by-case basis trying to get voluntary compliance and looking for an external funding source to help with capital investment. The Department is looking for direction from the Board. He suggested this be placed on the next APCAC agenda for an update. **Mr. Machler** said he would like to see that done.

**Mr. Johnson** said he had an item on which he would like more information. He said he understood the maximum achievable control technology (MACT) proposed regulation would be out this fall and promulgated next year for turbines and internal combustion engines. He was wondering if EPA sent out any information on formaldehyde reduction on turbines and lean burn engines. **Mr. Habeck** said he would provide an update on the MACT.

**Mr. Habeck** asked if there was a status report on coal bed methane. **Mr. Johnson** said tests can be done to determine what is there but wells can't be brought to production now. He said the discharge of water and where it is discharged is a big issue. He said Wyoming's first EIS had 5,000 wells and in Montana's Powder River Basin the industry has made plans for 9,500 to 10,000 wells.

#### **5. Confirmed next meeting date for September 13, 2001.**

**Mr. Habeck** said he may cancel the September meeting if he finds the schedule light. Mandatory rulemaking must be brought before this council so this would determine the necessity of meeting. He asked what the members present thought of requesting the Governor to write a letter to members thanking them for participating and stressing the necessity of their presence. He said the present core group is great but dialogue is needed from other perspectives also and this letter might encourage that representation and would support not only the public interests but the interests of the Department. **Ms. Lorenzen** said this group couldn't be useful if people do not come. **Mr. Habeck** said he would pursue the letter possibility.

Mr. Johnson moved and it was seconded the meeting adjourn. Meeting adjourned at 3:20 p.m